

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLYMPIA LEVINSON STIEGELE,

Plaintiff,

v.

BERNARD C. BAILEY, PAUL T. PRINCIPATO,
PETER NESSEN, THOMAS J. REILLY, DENIS
K. BERUBE, BUDDY G. BECK, CHARLES E.
LEVINE, WILLIAM K. AULET, MARCEL YON
and HARRIET MOUCHLEY-WEISS,

Defendants,

v.

VIISAGE TECHNOLOGY, INC.,

Nominal Defendant.

Case No. 05-10677 (MLW)

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT¹

Defendants Bernard C. Bailey, Paul T. Principato, Peter Nessen, Thomas J. Reilly, Denis K. Berube, Buddy G. Beck, Charles E. Levine, William K. Aulet and Harriet Mouchley-Weiss move, pursuant to Fed. R. Civ. P. 23.1 and Fed. R. Civ. P. 12(b)(6), to dismiss plaintiff's Amended Complaint ("Complaint") in its entirety and with prejudice. The grounds for this motion are that plaintiff failed to make pre-suit demand on the board of directors of nominal defendant Viisage Technology, Inc. (the "Company") and her Complaint fails to include specific, particularized allegations of a majority of the board's interestedness or lack of independence

¹ This motion is brought on behalf of all defendants *except* Marcel Yon, who, defendants believe, is no longer in this country and may have not even been served yet with the Amended Complaint.

such that pre-suit demand is excused. The Complaint also fails to allege that any defendant caused the Company any harm, and the exculpatory provision in the Company's By-Laws precludes liability by any of the director defendants on any of Plaintiff's claims. The grounds are further set forth in the accompanying memorandum of law.

WHEREFORE, Defendants respectfully ask the Court to dismiss Plaintiff's Amended Complaint in its entirety and with prejudice.

BERNARD C. BAILEY, PAUL T. PRINCIPATO,
PETER NESSEN, THOMAS J. REILLY,
DENIS K. BERUBE, BUDDY G. BECK,
CHARLES E. LEVINE, WILLIAM K. AULET and
HARRIET MOUCHLEY-WEISS

By their attorneys,

/s/ John R. Baraniak, Jr.

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Dated: October 30, 2006

CERTIFICATE OF SERVICE

This is to certify that on October 30, 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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John R. Baraniak, Jr.